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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/515,928 02/29/00 ELLIOTT

B 24673A

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2790 COLUMBUS ROAD
GRANVILLE OH 43023

PM82/1011

EXAMINER

VARNER, S	
ART UNIT	PAPER NUMBER

3635
DATE MAILED:

10/11/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/515,928

Applicant(s)

ELLIOTT, BERT WHITMORE

Examiner

Steve M Varner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 25, 26, are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Regarding claim 25, the specification does not mention color percentages.

Regarding claim 26, the specification does not mention the color purple.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 9, 10, 11, 17, 19, are rejected under 35 U.S.C. 103(a) as being unpatentable over Stapleton in view of Blanpied.

Regarding claims 1, 9, 10, 17, Stapleton shows a laminated shingle. It has an overlay member with tabs with granules and an underlay member attached. (Fig. 1) It does not have tabs of different colors. Blanpied has tabs of different colors, which are not substantially uniform in color. (Fig. 1) It would have been obvious to one of

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ordinary skill in the art at the time the invention was made to modify Stapleton with the different color tabs which are not substantially uniform in color of Blanpied because shingles such as Stapleton are often used in a variety of architectural settings where it would be desirable to have different colors for aesthetic reasons. Applicant fails to show criticality for each tab being substantially uniform in color; therefore, it would have been an obvious design choice to make the tabs substantially uniform in color. It would be an obvious design choice to align the color blends horizontally between the tabs and cut outs to achieve a certain architectural affect. It is common knowledge that shingles are used multiply to form a covering for a roof.

Regarding claims 3, 11, 19, Stapleton shows a layer of dark granules on the front surface. (Fig. 1)

Claims 2, 4-6, 8, 12, 13, 15, 16, 18, 20, 21, 22, 24, is rejected under 35 U.S.C. 103(a) as being unpatentable over Stapleton as applied in the rejection of claims 1, 9, 17, above in view of Phillips.

Regarding claim 2, Stapleton does not show dark underlay granules. Phillips shows underlay granules. (Fig. 1) It would have been obvious to one of ordinary skill in the art at the time the invention was made to make these granules dark for aesthetic reasons.

Regarding claims 4, 12, 20, Stapleton does not show a layer of dark granules applied to the lower edge and upper edge of the tabs of the overlay member. Philips shows a layer of dark granules applied to the lower edge and the upper edge of the tabs of the overly member. (Fig. 1) It would have been obvious to one of ordinary skill in the

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art at the time the invention was made to apply dark granules randomly for aesthetic reasons.

Regarding claims 5, 13, 21, Stapleton does not show rectangular tabs. Philips shows rectangular tabs. (Fig. 1) It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Stapleton with the rectangular tabs of Philips for aesthetic reasons.

Regarding claims 6, 16, 22, Stapleton does not show co-linear overlay/underlay members. Philips does show these co-linear. (Fig. 1) It would be obvious to one of ordinary skill in the art at the time the invention was made to modify Stapleton with the co-linear overlay/underlay members of Philips for aesthetic reasons.

Regarding claims 8, 15, 24, Stapleton does not show varying tab width. Philips shows varying tab width. (Fig. 1) It would be obvious to one of ordinary skill in the art at the time the invention was made to modify Stapleton with the varying tab widths of Philips for aesthetic reasons.

Regarding claim 18, see claim 3. Stapleton does not show the overlay cutouts exposing portions of the underlay members. Phillips shows the overlay cutouts exposing the underlay members. (Fig. 1) It would have been obvious to one of ordinary skill in the art to make cutouts for aesthetic reasons.

Claims 7, 14, 23, are rejected under 35 U.S.C. 103(a) as being unpatentable over Stapleton in view of Phillips as applied in the rejection of claims 6, 9, 17, above in further view of Bondoc et al.

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Regarding claims 7, 14, 23, Stapleton does not show beveled edges. Bondoc et al. shows corresponding beveled edges on the overlay and underlay members. It would be obvious to one of ordinary skill in the art at the time the invention was made to modify Stapleton with the beveled edges of Bondoc et al. for aesthetic reasons.

Response to Arguments

Applicant's arguments filed 7/20/01 have been fully considered but they are not persuasive. Stapleton shows the color blend for each tab substantially uniform in color. Blanpied shows varying colors on the tabs. Applicant does not show criticality for making tabs of various colors each one being uniform in color. Stapleton shows a single overlay. The color percentages and purple color are not enabled by the specification.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steve M Varner whose telephone number is 703 308-1894. The examiner can normally be reached on M-F 7:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D Friedman can be reached on 703 308-18940839. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305-7687 for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.

SV

October 4, 2001



Carl D. Friedman
Supervisory Patent Examiner
Group 3600